No. 05-669

In the Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY, SUCCESSOR IN INTEREST TO AMOCO PRODUCTION COMPANY, ET AL., PETITIONERS

v.

REJANE BURTON, ACTING ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether the six-year limitations period of 28 U.S.C. 2415(a), which applies to the filing of a "complaint" in an "action for money damages" founded upon a contract, governs the issuance of administrative orders.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 410 F.3d 722. The opinion of the district court (Pet. App. 21a-56a) is reported at 300 F. Supp. 2d 1.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2005. A petition for rehearing was denied on August 24, 2005 (Pet. App. 175a). The petition for a writ of certiorari was filed on November 22, 2005, and was

granted limited to Question 2 on April 17, 2006. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATEMENT

1. a. The Mineral Leasing Act of 1920 (MLA or the Act), 30 U.S.C. 181 *et seq.*, and other statutes charge the Secretary of the Interior with leasing federal and Indian lands for development of oil and gas resources. 30 U.S.C. 226(a); 25 U.S.C. 396, 396a-396g. By statute, lessees must pay royalties of at least 12.5% of the "amount or value of the production removed or sold from the lease." 30 U.S.C. 226(b)(1)(A). The Secretary interprets and implements that standard pursuant to his authority "to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out" the leasing program, 30 U.S.C. 189, including the issuance of administrative orders, see pp. 3-4, *infra*. Royalties from onshore federal oil and gas leases are generally divided evenly between the federal government and the State in which the leased land is located. 30 U.S.C. 191(a). Indian lessors, as landowners, receive all of the royalties derived from minerals extracted from their lands.

In 1982, Congress determined that because "the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from * * * lease sites [was] archaic and inadequate," it was "essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments." 30 U.S.C. 1701(a)(2) and (3). In the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, Congress therefore directed the Secretary to establish a comprehensive accounting, auditing, and collection system, 30 U.S.C. 1711(a), and to

"audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and [to] take appropriate actions to make additional collections or refunds as warranted." 30 U.S.C. 1711(c)(1). The Secretary delegated those responsibilities to the Minerals Management Service (MMS). See 30 C.F.R. 201.100.

Although lessees bear initial responsibility for calculating and paying royalties, MMS retains the right to audit a lessee's payments. 30 U.S.C. 1711; 30 C.F.R. 206.150(c), 206.170(d). MMS may also delegate that authority to the affected State or Indian Tribe. 30 U.S.C. 1732, 1735. If an audit reveals an apparent underpayment, MMS (or the affected State or Tribe on MMS's behalf) typically sends the lessee an issue letter that identifies the perceived deficiency and affords the lessee an opportunity to respond. See *Phillips Petroleum Co.* v. *Lujan*, 963 F.2d 1380, 1386 (10th Cir. 1992); *In re Amoco Prod. Co.*, 123 I.B.L.A. 278, 292 (1992) (Hughes, J., concurring). After reviewing any response, MMS determines whether there was an underpayment, and if so, it issues an order to pay additional royalties. See *ibid.* Such an order typically directs the payment of a specific amount of money, but if the lessee committed a systematic accounting error, it may also require the lessee to undertake a restructured accounting and to make an additional payment based on the result of that new accounting. See 30 U.S.C. 1724(d)(4); *Union Tex. Petroleum Energy Corp.*, 153 I.B.L.A. 170, 179 (2000). The Department's orders and decisions may also address compliance with requirements other than the payment of royalties, such as permits, easements, and rights of way, cooperative plans for oil and gas fields developed by more than one company, conservation of natural re-

sources, health and safety of workers, and discrimination. See, *e.g.*, 30 U.S.C. 185, 186, 225, 226(m); J.A. 12, 15, 17.

Administrative appeals of royalty orders are heard first by the Director of MMS or the Deputy Commissioner of Indian Affairs, 30 C.F.R. 290.105, and then (if further review is sought) by the Interior Board of Land Appeals (IBLA) or an Assistant Secretary, see 30 C.F.R. 290.108. Filing an appeal does not stay the order, 30 C.F.R. 218.50(c), but MMS will suspend the effect of an appealed order if the lessee complies with applicable bonding requirements or demonstrates financial solvency, 30 C.F.R. 243.8. Similar provisions apply to administrative appeals of other orders and decisions. See, *e.g.*, 30 C.F.R. 290.1 *et seq.*

If a lessee knowingly fails to comply with an order to pay, MMS may administratively assess civil penalties of up to $10,000 for each day a violation continues. 30 U.S.C. 1719(c). The Attorney General is also authorized to file an enforcement action in federal district court under 30 U.S.C. 1722(a), which authorizes the courts to "restrain any violation" of FOGRMA or to "compel the taking of any action required" under any federal mineral leasing law. Failure to comply with some types of MMS orders can also give rise to criminal liability. 30 U.S.C. 1720.

b. MMS has long maintained that the six-year statute of limitations of 28 U.S.C. 2415(a), which governs the filing of a "complaint" in an "action for money damages" "founded upon * * * contract," does not apply to the agency's administrative proceedings. *E.g.*, *Shell Oil Co.*, 150 I.B.L.A. 298, 306 (1999). In 1996, Congress enacted a seven-year limitations period for administrative orders and judicial proceedings arising from lessees' failure to

pay royalties for oil and gas leases on federal lands, and it clarified that Section 2415(a) does not apply to such orders and proceedings. Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA), Pub. L. No. 104-185, § 4(a), 110 Stat. 1704 (30 U.S.C. 1724(b)(1) and (3)). But the 1996 legislation does not apply to mineral leases on Indian lands, to federal leases for the development of minerals other than oil and gas (such as coal, other solid minerals, and geothermal resources), or to oil and gas production on federal leases before its enactment. FOGRSFA §§ 9, 11, 110 Stat. 1717 (30 U.S.C. 1701 note).

2. a. From 1989 to 1996, Amoco Production Company (Amoco), one of the predecessors in interest to petitioner BP America Production Company, extracted coalbed methane gas under various federal leases in the San Juan Basin in New Mexico. Pet. App. 68a-70a. Under the MLA, Amoco was required to pay royalties in the amount of 12.5% of the "amount or value of the production removed or sold from the lease." 30 U.S.C. 226(b)(1)(A); see J.A. 23 (reiterating that standard in one of petitioners' lease agreements).[1] The Interior Department's regulations have long defined the "value of production" to be the "gross proceeds" accruing to the lessee, 30 C.F.R. 206.152(h), and have prohibited lessees from deducting from their gross proceeds the costs of placing gas in marketable condition, 30 C.F.R. 206.152(i).

When the State of New Mexico conducted an audit of Amoco's royalty calculations, it determined that Amoco had not included in its gross proceeds the cost of condi-

[1] Although petitioners have a number of affected leases, only one of the lease agreements is in the record. See J.A. 10-23. The issues before this Court do not, however, turn on the terms of individual leases.

tioning gas for market by removing excess carbon dioxide (CO_2), which has no energy content and reduces the value of the gas. Pet. App. 144a-145a. After the State sent letters to Amoco concerning that matter during the summer of 1996, Amoco responded with a letter on October 15, 1996, that argued that removal of excess CO_2 should not be considered a cost of placing the gas in marketable condition. *Id.* at 150a.

Based on the State's audit and Amoco's response, MMS issued an order to pay on May 27, 1997. Pet. App. 144a-156a. MMS determined that Amoco had erred by excluding the costs of removing excess CO_2 from its gross proceeds, *id.* at 145a-148a, and ordered Amoco to pay additional royalties of $4,117,607 for the leases and years audited by the State, *id.* at 144a-145a, 153a. Because the audit uncovered a "consistent and systematic error" in Amoco's accounting, MMS also ordered Amoco to perform a restructured accounting for all of its leases in the San Juan Basin producing coalbed methane for the period January 1989 through August 1996. *Id.* at 153a. The order informed Amoco that failure to comply with its terms could give rise to civil penalties, *id.* at 154a, but that if Amoco timely pursued an administrative appeal, "compliance with [the] order will be suspended upon the posting of an adequate surety pending the outcome of the appeal," *id.* at 155a.

The Assistant Secretary of the Interior for Land and Minerals Management denied Amoco's administrative appeal. Pet. App. 68a-97a. The Assistant Secretary agreed with MMS that gas produced in the San Juan Basin was not in marketable condition until excess CO_2 was removed. *Id.* at 81a. Relying on prior IBLA decisions, the Assistant Secretary also rejected Amoco's contention that the six-year limitations period of 28

U.S.C. 2415 applies to administrative proceedings. Pet. App. 95a-96a.

b. Like Amoco, petitioner Atlantic Richfield Company and its subsidiary, Vastar Resources, Inc. (ARCO/Vastar), extracted coalbed methane gas pursuant to various leases on federal lands in the San Juan Basin. Pet. App. 4a. After an audit revealed that ARCO/Vastar had not included CO_2 removal costs in its gross proceeds, MMS issued an order to pay, and the Assistant Secretary denied ARCO/Vastar's appeal. *Id.* at 157a-174a; *id.* at 98a-126a. ARCO/Vastar did not, however, raise a statute-of-limitations defense before the agency.

3. Petitioners sought judicial review of the agency's final decisions in the United States District Court for the District of Columbia, which rejected their challenges. Pet. App. 21a-56a. After concluding that the Assistant Secretary had reasonably determined that "the gas at issue is not marketable unless it has reduced levels of CO_2," *id.* at 39a, the court rejected Amoco's contention that Section 2415(a) bars MMS from collecting royalties due more than six years before the agency issued the order to pay, *id.* at 48a-55a. The court explained that the statutory terms "action" and "complaint" "indicate[] that the statute applies to judicial proceedings, not administrative orders." *Id.* at 55a.

4. The court of appeals affirmed. Pet. App. 1a-20a. The court upheld the Assistant Secretary's decision on the merits, deferring to her interpretation of the MLA and the governing regulations. *Id.* at 7a-14a. The court also held that MMS's orders were not time-barred by 28 U.S.C. 2415(a). Pet. App. 16a-20a. Noting that the statute limits only the filing of a "complaint" in an "action for money damages," the court explained that "[t]he phrase 'action for money damages' points strongly to a

suit in a court of law, rather than an agency enforcement order that happens to concern money due under a statutory scheme." *Id.* at 16a. "Any doubt is removed," in the court's view, "by the fact that subsection 2415(a) measures the limitations period from the filing of a 'complaint,'" because MMS did not issue a "complaint" requesting relief, but instead issued "an *order*, the defiance of which incurs a 'Notice of Noncompliance' and subsequent civil penalties, absent a successful appeal." *Id.* at 17a.

The court of appeals noted that another provision in Section 2415 expressly exempts administrative offsets from the limitations period. Pet. App. 17a-18a (citing 28 U.S.C. 2415(i)). The court explained, however, that the administrative-offset provision was added to Section 2415 more than 16 years after its enactment to address a specific controversy regarding the treatment of offsets, and thus should not be read to mean—contrary to Section 2415(a)'s plain text—that the limitations period generally applies to administrative proceedings. *Id.* at 17a-19a. "[B]uttressing" that conclusion, in the court's view, is the canon of construction that "statutes of limitations against the sovereign are to be strictly construed." *Id.* at 19a. Finally, the court rejected Amoco's reliance on "the underlying purpose of repose animating section 2415" because "such appeals to purpose cannot override a statute's clear language." *Id.* at 19a-20a.

Because the court of appeals agreed with the government that an order directing the payment of royalties is not an action for money damages initiated by the filing of a complaint, it did not reach the government's alternative arguments that the order did not seek money damages and was not founded upon a contract within the meaning of Section 2415(a). Pet. App. 20a.

SUMMARY OF ARGUMENT

Section 2415(a)—which must be strictly construed in favor of the government—applies only to the filing of a complaint in court, not to the issuance of an order by an administrative agency.

A. The statute governs the filing of a "complaint" in an "action for money damages." 28 U.S.C. 2415(a). At the time of Section 2415(a)'s enactment, the term "action" was ordinarily understood to mean "[t]he legal and formal demand of one's right from another person or party made and insisted on in a court of justice." *Black's Law Dictionary* 49 (4th ed. 1951). The ordinary meaning of the term "complaint" likewise referred to the pleading commencing a suit in court. Thus, commencing an "action" by filing a "complaint" refers, in its "ordinary sense," to filing a complaint in court, not to initiating an administrative proceeding. *Unexcelled Chem. Corp.* v. *United States*, 345 U.S. 59, 66 (1953). Section 2415(a) confirms that point by providing that the time to file a "complaint" in an "action" expires no sooner than one year after the final decision in applicable "administrative proceedings." 28 U.S.C. 2415(a). The statute thereby distinguishes between an "action" and an "administrative proceeding[]," with administrative proceedings triggering the time bar, not being limited by it.

Even if Section 2415(a) governed the initiation of some administrative proceedings, it would not apply to MMS's issuance of orders to pay, because orders are not complaints. Complaints seek relief; orders impose it. Although petitioners contend that an order to pay is functionally a complaint, it is not. Issued after an audit and informal agency process, an MMS order is legally binding on a lessee who has participated in the adminis-

trative scheme, unless the lessee both initiates a successful appeal and obtains a suspension of the order pending appeal by posting an adequate bond or demonstrating financial solvency.

B. The statutory context confirms Section 2415's plain meaning. Congress included Section 2415 in Title 28 of the United States Code, which is entitled "Judiciary and Judicial Procedure"—not administrative procedure—and in Title 28's Chapter 161, which governs the judiciary and judicial procedure in cases involving the "United States As Party Generally." Every other provision in Chapter 161 applies only to procedures in court, not to administrative proceedings. Like Section 2415(a), several of those provisions also use the term "action" to describe their applicability to suits in court.

C. The legislative history leaves little doubt that Section 2415(a) "defines the time limitations for the United States to bring *actions in the U.S. courts*." H.R. Rep. No. 1534, 89th Cong., 2d Sess. 2 (1966) (emphasis added). While the committee reports are saturated with references to the courts, they mention administrative proceedings only in discussing their effect on the time limit for filing a suit in court.

Petitioners' reliance on subsequent amendments to Section 2415(a) is misplaced. When it expressly excluded administrative offsets from the statute of limitations, Congress confirmed that it was only "clarifying" the statute on that point in light of a specific disagreement that had arisen about the treatment of offsets (but not about other administrative proceedings). S. Rep. No. 378, 97th Cong., 2d Sess. 2 (1982). Clarifying that the statute does *not* apply to one type of administrative proceeding hardly expresses an intent that it should apply to others. In any event, any such inference from

an amendment 16 years after Section 2415 was enacted would not be a basis for disregarding the statute's text, context, and the legislative history of the enactment of Section 2415 itself in 1966. If Section 2415 applied only to judicial proceedings before 1982, no rational Congress would have thought that the way to take the significant step of extending it to a multitude of administrative schemes would be a single reference to administrative offsets. The legislative history of amendments extending Section 2415's limitations period for some Indian claims, like the legislative history of the original Section 2415, similarly lends no support to petitioners' position because it confirms that Congress was concerned with suits in court, not administrative proceedings.

D. Petitioners' appeal to policy concerns cannot overcome Section 2415's clear text, context, and history. Moreover, there is little reason to assume that Congress would want the same across-the-board limitations period that governs suits in court to apply generally to the whole range of administrative proceedings. There are substantial differences between court and agency proceedings, and agency proceedings themselves differ from program to program. It would make especially little sense to apply Section 2415(a)'s limitations period for *initiating* court proceedings to MMS's *orders*, because MMS issues those orders after informal process. When Congress enacted a prospective limitations period for some orders to pay royalties, it therefore chose a longer period of seven, not six, years.

In addition, Congress enacted FOGRMA in 1982 because oil and gas lessees were underpaying royalties by staggering amounts—up to half a billion dollars annually. By instructing MMS to "audit and reconcile, to the extent practicable, all current *and past* lease accounts,"

Congress manifested an intent to promote recovery over repose. 30 U.S.C. 1711(c)(1) (emphasis added). Because it is not practical to audit all accounts, however, underpayments are difficult to identify and may go undetected for more than six years. That makes it all the more important to recover past underpayments when an audit reveals them, especially for Indian lessors to whom the government owes a trust responsibility.

ARGUMENT

THE LIMITATIONS PERIOD OF 28 U.S.C. 2415(a) DOES NOT GOVERN THE ISSUANCE OF ADMINISTRATIVE ORDERS

The court of appeals correctly held that the six-year limitations period of 28 U.S.C. 2415(a) applies only to the filing of a complaint in court, not to the issuance of an order by an administrative agency. That statute provides:

> [E]xcept as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

28 U.S.C. 2415(a).

Congress enacted Section 2415(a) against the backdrop of two important canons of construction. First, "statutes of limitations against the sovereign are to be strictly construed," Pet. App. 19a, and the government "is subject to no time limitation, in the absence of con-

gressional enactment clearly imposing it." *E.I. DuPont de Nemours & Co.* v. *Davis*, 264 U.S. 456, 462 (1924); accord *Badaracco* v. *Commissioner*, 464 U.S. 386, 391 (1984). That principle reflects the more general rule that "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." *Lehman* v. *Nakshian*, 453 U.S. 156, 161 (1981).

Second, a statute of limitations extinguishes only the remedy, not the underlying right. *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 416-417 (1998); *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 504 (2001). Thus, a statute of limitations applicable to the government affects only those remedies the statute bars in terms clear enough to satisfy the strict-construction canon. *United States* v. *Whited & Wheless, Ltd.*, 246 U.S. 552, 561 (1918).

The text, context, and legislative history of Section 2415(a) demonstrate that it applies only to the filing of complaints in courts, not to the issuance of orders by agencies. Thus, "[t]he limitation set forth in section 2415(a) does not terminate all of the government's rights on a contract claim after six years, but merely eliminates one potential remedy—the filing of a lawsuit seeking money damages." *Thomas* v. *Bennett*, 856 F.2d 1165, 1169 (8th Cir. 1988).[2]

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[2] Although the limitations issue is properly presented by BP America as successor-in-interest to Amoco, ARCO/Vastar forfeited that claim by not raising it during the administrative proceedings or in the lower courts. See, *e.g.*, Pet. C.A. Br. 50-51 (raising this issue only with respect to Amoco); Pet. App. 48a (noting that Amoco made the argument). Thus, BP America is the only proper petitioner on this issue, and this Court's decision could not affect the judgment as to ARCO/Vastar. Gov't Pet.-stage Br. 15 n.3.

A. The Ordinary Meanings of the Statutory Terms, Including "Action" and "Complaint," Refer to a Suit in Court

Because the statute does not define its terms, such as "action for money damages" and "complaint," those terms have their "ordinary or natural meaning." *FDIC* v. *Meyer*, 510 U.S. 471, 476 (1994) (construing undefined statutory term by reference to *Black's Law Dictionary*); accord *Pasquantino* v. *United States*, 544 U.S. 349, 356 (2005); *Dunn* v. *CFTC*, 519 U.S. 465, 470 (1997).

1. a. As then-Judge Roberts explained for the court of appeals, "[t]he phrase 'action for money damages' points strongly to a suit in a court of law, rather than an agency enforcement order that happens to concern money due under a statutory scheme." Pet. App. 16a. At the time of the statute's enactment, the term "action" was ordinarily understood to mean "[t]he legal and formal demand of one's right from another person or party made and insisted on *in a court of justice*. * * * Pursuit of right *in court*." *Black's Law Dictionary*, *supra*, at 49 (emphases added; citations omitted); see, *e.g.*, 1 Am. Jur. 2d *Actions* § 4, at 798 (2005) ("An 'action' is generally defined as a *judicial* proceeding in which one asserts a right or seeks redress for a wrong.") (emphasis added); 28 U.S.C. 2401(a) (using the terms "action" and "civil action" synonymously in a limitations provision); Fed. R. Civ. P. 2 ("There shall be one form of action to be known as 'civil action.'").[3]

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[3] One need look no farther than this Court's decisions from last June to confirm that the terms "action" and "administrative" are commonly juxtaposed in ordinary legal usage, with the former referring solely to court proceedings. See *Woodford* v. *Ngo*, 126 S. Ct. 2378, 2392 (2006) ("[A] prisoner may not bring an action with respect to prison conditions

The remainder of the statutory text buttresses the conclusion that an "action" is a suit in court. Congress referred not only to an "action," but to an "action for money damages." At the time of the statute's enactment, the term "damages" was ordinarily understood to mean "[a] pecuniary compensation or indemnity, which may be recovered in the courts." *Black's Law Dictionary*, *supra*, at 466. Especially when taken together, the phrase "action for money damages" has long been understood to refer to a particular type of suit in court. See, *e.g.*, *Chauffeurs Local No. 391* v. *Terry*, 494 U.S. 558, 570 (1990) ("Generally, an action for money damages was the traditional form of relief offered in the courts of law.") (internal quotation marks and citation omitted).

Significantly, the statute distinguishes between an "action" and an "administrative proceeding[]," with the time for filing an "action" beginning to run either upon accrual of the cause of action or upon completion of "applicable administrative proceedings required by contract or by law." 28 U.S.C. 2415(a). Administrative proceedings therefore trigger the limitations period; they are not "actions" governed by it. Section 2415(a)'s distinction between actions and administrative proceedings is not unusual—other statutes of limitations draw the same

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'until such administrative remedies as are available are exhausted.'") (quoting 42 U.S.C. 1997e(a)) (emphasis omitted); *Burlington N. & Santa Fe Ry.* v. *White*, 126 S. Ct. 2405, 2410 (2006) ("After exhausting administrative remedies, White filed this Title VII action."); *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy*, 126 S. Ct. 2455, 2467-2468 (2006) (Breyer, J., dissenting) (referring disjunctively to "state administrative review or civil action," and again to "civil actions and administrative proceedings") (quoting H.R. Rep. No. 296, 99th Cong., 1st. Sess. 6 (1985) and H.R. Conf. Rep. No. 687, 99th Cong., 2d Sess. 7 (1986)) (emphasis omitted).

distinction by extending the time for filing an "action" in court until after the conclusion of administrative proceedings, reinforcing the distinction between administrative proceedings and actions in the statute-of-limitations context. See 15 U.S.C. 1691e(f)(1) (Equal Credit Opportunity Act); 46 U.S.C. App. 1292 (war risk insurance).

Other terms used in Section 2415, such as "right of action" and "defendant" (28 U.S.C. 2415(a) and (e)) also ordinarily refer to aspects of suits in court, not administrative proceedings. A "right of action" is ordinarily "[t]he right to bring *suit*; a legal right to maintain an action," with "suit" meaning "any proceeding * * * in a court of justice." *Black's Law Dictionary*, *supra*, at 1488 (emphasis added); cf. *Jackson Transit Auth.* v. *Local Div. 1285, Amalgamated Transit Union*, 457 U.S. 15, 21 (1982) (noting that "private right of action decisions address the * * * question whether Congress intended that a particular party be able to bring suit"). That a "right" of "action" is the right to bring a suit in court reinforces the conclusion that "action," as used in Section 2415(a), refers to a suit in court. The term "defendant" also ordinarily refers to a party to a suit in court. See *Black's Law Dictionary*, *supra*, at 507 (defining "defendant" to mean "[t]he person defending or denying; the party against whom relief or recovery is sought in an action or *suit*") (emphasis added).

b. As the court of appeals explained, any lingering doubt "is removed by the fact that subsection 2415(a) measures the limitations period from the filing of a 'complaint.'" Pet. App. 17a; accord *Phillips Petroleum Co.* v. *Johnson*, No. 93-1377, 1994 WL 484506, at *1 (5th Cir. Sept. 7, 1994) (36 F.3d 89 (Table)), cert. denied, 514 U.S. 1092 (1995). By requiring that the "complaint" be "filed

within" the specified period, Section 2415(a) contemplates that an action governed by the statute will commence with the filing of a complaint. 28 U.S.C. 2415(a). At the time of the statute's enactment, "complaint" was ordinarily understood to refer to "civil practice," where "[i]n those states having a Code of Civil Procedure, the complaint is the first or initiatory pleading on the part of the plaintiff in a civil action." *Black's Law Dictionary*, *supra*, at 356. That is the case with the Federal Rules of Civil Procedure, which provide that "[a] civil action is commenced by filing a complaint with the court." Fed. R. Civ. P. 3.

This Court therefore held in *Unexcelled Chemical Corp.* v. *United States*, 345 U.S. 59 (1953), that commencing an "action" by filing a "complaint" refers, in its "ordinary sense," to filing a complaint in court, not to initiating an administrative proceeding. *Id.* at 66. In *Unexcelled Chemical*, this Court construed a statute of limitations providing that "an action is commenced * * * on the date when the complaint is filed." *Ibid.* (quoting 29 U.S.C. 256). In holding that "the issuance of a formal complaint in the administrative proceedings" that preceded the lawsuit did not constitute commencement of the "action" for purposes of the statute of limitations, this Court explained that "[c]ommencement of an action by the filing of a complaint has too familiar a history" to be read as referring to the filing of an administrative pleading. *Ibid.*

That conclusion follows, *a fortiori*, for Section 2415, because the filing of the complaint is the relevant tolling event for both the general six-year statute of limitations and the one-year period "*after* final decisions have been rendered in applicable administrative proceedings required by contract or by law." 28 U.S.C. 2415(a) (em-

phasis added). Congress could not have meant to give the government one year from the end of administrative proceedings to commence administrative proceedings. Only in court could a complaint be filed *after* the conclusion of administrative proceedings. *Irwin Co.* v. *3525 Sage St. Assocs., Ltd.*, 37 F.3d 212, 214 n.1 (5th Cir. 1994). And because Section 2415 uses the term "complaint" for both the six-year and one-year periods, it clearly refers to the commencement of an action in court.

2. Petitioners argue (Pet. Br. 17-26) that the statutory terms "action" and "complaint" are sometimes used to refer to administrative proceedings. But those are far from the ordinary meanings of those terms, as just explained, and the canon requiring strict construction of limitations periods against the government counsels against giving those terms a broader reading here. Moreover, the statutory phrase must be read as a whole, and "[t]aken together, the entire [statutory] phrase plainly and indisputably refers to lawsuits brought by the federal government." Pet. App. 17a (quoting *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001, 1010 (10th Cir. 2001) (en banc) (Briscoe, J., dissenting)). The authorities relied on by petitioners are not to the contrary.

a. Petitioners first argue (Pet. Br. 17-18) that this Court "construed the term 'action' to encompass administrative actions" in *West* v. *Gibson*, 527 U.S. 212 (1999), and *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986). Not so. In *West*, the majority and dissenters alike agreed that "the word 'action' often refers to judicial cases, not to administrative 'proceedings.'" 527 U.S. at 220 (citing *New York Gaslight Club, Inc.* v. *Carey*, 447 U.S. 54, 60-62 (1980), as "distinguishing civil 'actions' from administrative 'pro-

ceedings'"); accord *id.* at 227 (Kennedy, J., dissenting) ("[T]he word 'action' is often used to distinguish judicial cases from administrative 'proceedings.'").

The *West* Court held that the Equal Employment Opportunity Commission's authority to award "appropriate remedies" in Title VII cases against government agencies under 42 U.S.C. 2000e-16(b) includes authority to award compensatory damages. 527 U.S. at 217. In doing so, the Court rejected the contention that because a separate statutory provision authorizes recovery of compensatory damages "[i]n an action" (42 U.S.C. 1981a(a)(1)), such damages are available only in court. Notwithstanding petitioners' contrary characterization (Pet. Br. 18), the Court explained that the question was *not* whether the term "action" includes administrative proceedings, but whether Congress's authorization of compensatory damages in an "action" was "intended to deny that compensatory damages is '*appropriate*' administrative relief" under the *separate* provision governing administrative remedies. *West*, 527 U.S. at 220-221. By resting its decision on the authorization for appropriate administrative relief, this Court appeared to recognize that the separate provision governing compensatory damages in an "action" applied only to suits in court.

Petitioners' reliance (Pet. Br. 17-18) on *Delaware Valley Citizens' Council* fares no better. There this Court construed 42 U.S.C. 7604(d), which provides that a court may award "costs of litigation" in "any action" brought under a provision of the Clean Air Act, 42 U.S.C. 7401 *et seq.* This Court held that *when a plaintiff prevails in a suit in court*, its recovery of the costs of litigation can include out-of-court costs of monitoring the defendant's compliance with a consent decree and

attempting to ensure compliance, including in administrative fora. 478 U.S. at 558-559. In such circumstances, a court issues the award in a court "action," not an administrative proceeding, and this Court explained that the compensable out-of-court work was "as necessary to the attainment of adequate relief" as "th[e] earlier work in the courtroom." *Id.* at 558. The Court also saw no reason to believe that Congress intended a different result under Section 7604(d) than would obtain under another statute that authorizes the recovery of litigation costs in "'any action or proceeding' brought to enforce the Civil Rights Acts." *Id.* at 559 (quoting 42 U.S.C. 1988(b)).

Significantly, the Court in *Delaware Valley Citizens' Council* "express[ed] no judgment on the question whether an award of attorney's fees is appropriate in federal administrative proceedings when there is no connected court action in which fees are recoverable." 478 U.S. at 560 n.5. Nor did the Court address a statute of limitations concerning the federal government's filing of a complaint in an action for money damages. Thus, *Delaware Valley Citizens' Council* sheds no light on the interpretive question here.

b. Petitioners argue (Pet. Br. 18-21) that various statutes and regulations illustrate that the word "action" can include administrative proceedings. Unlike Section 2415(a), however, every single authority cited by petitioners expressly states that it applies to administrative as well as judicial proceedings, such as by using the term "administrative action," *e.g.*, 42 U.S.C. 5205(a)(1), or by using an inclusive phrase like "an administrative, civil, or criminal action," *e.g.*, 15 U.S.C. 78u(h)(9)(B). Far from supporting petitioners' contention that the term "action" standing alone includes administrative

proceedings, those provisions suggest that when Congress intends a phrase that includes the word "action" to govern administrative proceedings, it says so expressly.[4]

c. Similarly, petitioners rely (Pet. Br. 22-23) on the fact that some administrative proceedings begin with the filing of a document called a "complaint." As explained above, however, the ordinary meaning of the term "complaint" does not include administrative filings, especially in statutes of limitations governing the commencement of actions, and especially here, where the time for filing a complaint is based in part on the termination of administrative proceedings. See *Unexcelled Chem. Corp.*, 345 U.S. at 66; pp. 17-18, *supra*.

It would, moreover, make little sense to base a general limitations period for administrative proceedings on the filing of a "complaint." While judicial proceedings invariably begin with the filing of a "complaint" or functionally similar document, administrative procedures vary substantially, requiring limitations periods for such proceedings to use different terminology tailored to specific contexts. For example, 15 U.S.C. 4504(a)(2), which governs some enforcement actions by the Secretary of Energy, applies its limitations period for a lawsuit to "the filing of a complaint," but applies its limitations period for administrative proceedings to "the signing

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[4] Although petitioners emphasize (Pet. Br. 21) that MMS has occasionally referred in passing to its administrative proceedings as "actions," MMS has not construed its proceedings to be "actions" within the meaning of Section 2415. The question here is not whether the term "action" is sometimes used broadly or loosely to refer to administrative proceedings, but whether its ordinary meaning, in the context of Section 2415(a)'s limitations provision and the other relevant terms in that section like "complaint" and "right of action," encompasses such proceedings.

and issuance of a proposed remedial order." The Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.*, which governs many government contract claims, see 41 U.S.C. 602, requires that "each *claim* by the government against a contractor relating to a contract shall be *submitted*" to a contracting officer within six years of the claim's accrual, 41 U.S.C. 605(a) (emphases added). Other administrative limitations periods likewise refer to events other than the filing of a complaint. See, *e.g.*, 31 U.S.C. 3808 (limitations period for "commenc[ing]" a "hearing"); 42 U.S.C. 9612(d) (limitations period for "present[ing]" a "claim"); 42 U.S.C. 1320a-7a(c)(1) (limitations period for "initiat[ing] a proceeding").

As the court of appeals recognized, this case provides a prime example of an administrative scheme that does not involve the filing of a "complaint." Pet. App. 17a. If an audit reveals an apparent underpayment by a lessee, MMS typically sends the lessee an issue letter and requests a response. See *Phillips Petroleum Co.* v. *Lujan*, 963 F.2d 1380, 1386 (10th Cir. 1992); *In re Amoco Prod. Co.*, 123 I.B.L.A. 278, 292 (1992) (Hughes, J., concurring). After reviewing the response, MMS will issue, if appropriate, an order to pay that is legally binding unless the lessee takes an administrative appeal and obtains a suspension of the order pending appeal by posting a bond or demonstrating financial solvency. See 30 C.F.R. 218.50(c), 243.8. There is no "complaint" in that scheme; instead, there is (i) informal process, followed by (ii) an order imposing (not requesting) relief, and (iii) an administrative appeal. When Congress enacted a prospective seven-year limitations period actually addressed to federal oil and gas royalties, it therefore applied that period not to the filing of a complaint, but to the commencement of a "judicial proceeding or de-

mand," 30 U.S.C. 1724(b)(1), and it defined the term "demand" to include "an order to pay issued by the Secretary," 30 U.S.C. 1702(23).

Although petitioners argue (Pet. Br. 23 & n.11) that MMS's orders should be treated as complaints for this purpose, the court of appeals correctly explained that "[i]t strains legal language to construe [MMS's] administrative compliance order as a 'complaint' for money damages in any ordinary sense of the term." Pet. App. 17a; accord *Phillips Petroleum*, 1994 WL 484506, at *1. A complaint seeks relief; an order imposes it. Compare *Black's Law Dictionary*, *supra*, at 356 (defining "complaint" to mean the "first or initiatory pleading on the part of the plaintiff in a civil action") with *id.* at 1247 (defining "order" to mean a "mandate, precept; a command or direction authoritatively given; a rule or regulation"). See 5 U.S.C. 551(6) (defining "order" for purposes of the Administrative Procedure Act as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing").

Petitioners' response (Pet. Br. 23-24 n.11)—that "[a]n agency cannot evade the six-year limitations period simply by calling the document that commences proceedings something other than a 'complaint'"—ignores the fact that MMS's orders do not "initiate proceedings for the recovery of royalties," as petitioners claim. *Id.* at 24 n.11. Instead, as explained above, MMS's orders *command* the payment of royalties following an audit and informal agency process, and an order is legally binding unless a lessee brings a successful appeal and MMS suspends the order pending appeal. See Pet. App. 17a; p. 22, *supra*.

There are two lessons to be drawn from Section 2415(a)'s use of the term "complaint." First, Congress did not have administrative proceedings in mind. And second, even if some administrative pleadings were governed by the limitations period, MMS's orders would not be.[5]

B. The Statutory Context Confirms That The Limitations Period Does Not Apply to Administrative Proceedings

The statutory context confirms that Section 2415 does not govern administrative proceedings. Section 2415 is located within Title 28 of the United States Code, which is entitled "Judiciary and Judicial Procedure"—not "Administrative Procedure," which is governed by Chapter 5 of Title 5. Moreover, Section 2415 is included in Title 28's Chapter 161, which governs the Judiciary and judicial procedure specifically in cases involving the "United States As Party Generally."

The other provisions of Chapter 161 apply only to cases in court, not to administrative proceedings. And like Section 2415(a), several of them use the term "action" to describe their scope as being limited to suits in court. See, *e.g.*, 28 U.S.C. 2402 (delineating the jury trial right in "any action" against the United States); 28 U.S.C. 2403 (governing intervention by the United States in an "action, suit or proceeding in a court of the United States"); 28 U.S.C. 2405 (debtors summoned as possible garnishees in an "action or suit commenced by

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[5] Petitioners argue (Pet. Br. 15, 26) that Section 2415(a) should be construed broadly because it applies to "every" action for money damages founded upon a contract and initiated by a complaint. Of course, a statute that covers *every* action in court still does not cover *any* administrative proceedings.

the United States" shall "appear in open court"); 28 U.S.C. 2406 ("[i]n an action by the United States," a defendant's ability to assert a credit depends in part on its possession of vouchers "at the time of trial"); 28 U.S.C. 2407 (governing procedure by a "court" in "an action by the United States" against a person accountable for public money).[6]

Section 2415's location in Chapter 161 of the Judicial Code is no accident—Congress specified that placement when it enacted the limitations period. Act of July 18, 1966, Pub. L. No. 89-505, 80 Stat. 304; see H.R. Rep. No. 1534, 89th Cong., 2d Sess. 2 (1966) (explaining that Section 2415 would be added to Chapter 161, "a chapter which contains the general provisions applying to the United States as a party in litigation"). Congress's placement of Section 2415 in Chapter 161 further demonstrates that it intended the provision to govern only suits in court, not administrative proceedings. Cf. *Almendarez-Torres* v. *United States*, 523 U.S. 224, 234 (1998) ("'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute.") (quoting *Brotherhood*

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[6] See also 28 U.S.C. 2401 (general statute of limitations for commencing a "civil action" against the United States); 28 U.S.C. 2404 (effect of defendant's death in "a civil action for damages" brought by the United States); 28 U.S.C. 2408 (security for damages or costs not required of the United States); 28 U.S.C. 2409 (procedure in civil action for partition of lands); 28 U.S.C. 2409a (procedure in civil action to quiet title to real property); 28 U.S.C. 2410 (procedure in civil action "in any district court" involving property on which the United States has a lien); 28 U.S.C. 2411 (interest to be included in a judgment of a "court"); 28 U.S.C. 2412 (award of costs and fees by a "court"); 28 U.S.C. 2413 (execution of judgment rendered by a "court"); 28 U.S.C. 2414 (payment of judgments rendered by a "court").

of R.R. Trainmen v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528-529 (1947)).

Moreover, Congress has shown that when it intends a limitations period to apply to administrative proceedings, it knows how to say so.[7] When Congress has wanted the same limitations period to apply to both administrative and judicial proceedings, it has said that expressly, too, including in the prospective limitations period governing a "judicial proceeding or demand" for federal oil and gas royalties. 30 U.S.C. 1724(b)(1).[8] Thus, petitioners' contention (Pet. Br. 25-26) that the statute should be construed broadly to cover administrative proceedings because it is not expressly limited to suits in court ignores not only the ordinary meanings of the statutory terms, the statutory context, and the narrow construction canon, but also the fact that Congress has generally followed the opposite course by affirmatively specifying when a limitations period applies to administrative proceedings.

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[7] See, *e.g.*, 42 U.S.C. 1320a-7a(c)(1) (limitations period for administrative "proceeding"); 42 U.S.C. 5205(a)(1) (limitations period for "administrative action[s]"); 42 U.S.C. 9612(d) (limitations periods for administrative claims procedure).

[8] See, *e.g.*, 15 U.S.C. 4504(a)(1) and (3) (defining a "civil enforcement action" to include an "administrative or judicial civil action" in a statute of limitations provision); 21 U.S.C. 335b(b)(1) and (3) (classifying an administrative remedy as an "[a]ction by the Secretary" and a judicial remedy as an "[a]ction by the Attorney General" in specifying the statute of limitations for every "action"); 38 U.S.C. 5314(c) (specifying that there is no limitations period either for "bringing civil actions or for commencing administrative proceedings"); 12 U.S.C. 1787(6)(B) (providing the same period to "request administrative review" or "file suit"); 12 U.S.C. 1821(d)(6)(B) (same); cf. 31 U.S.C. 3712(d) ("The Government waives all claims * * * not reported to the Comptroller General for collection within 6 years.").

C. The Legislative History Confirms the Import of the Plain Text

The legislative history of Section 2415(a) confirms that it means what it says.

1. The committee reports explain that Section 2415(a) "defines the time limitations for the United States to bring *actions in the U.S. courts*" by barring the government from asserting "old and stale claims *in the courts*." H.R. Rep. No. 1534, *supra*, at 2, 9 (emphases added); see S. Rep No. 1328, 89th Cong., 2d Sess. 1-10 (1966) (quoting the House report as the Senate report). The reports go on to confirm that Section 2415(a) applies to a "civil action," and they are replete with references to the United States bringing "suit." *E.g.*, H.R. Rep. No. 1534, *supra*, at 2, 4, 8, 9, 10, 11. As petitioners concede (Pet. Br. 24), those terms refer to judicial proceedings. See, *e.g.*, *Black's Law Dictionary*, *supra*, at 1603 (defining "suit" to mean "any proceeding * * * in a court of justice"); *id.* at 311 (defining "civil action" to mean "[a]n action wherein an issue is presented for trial"). With additional references to "civil litigation" and "court congestion," the reports are replete with court terminology. *E.g.*, H.R. Rep. No. 1534, *supra*, at 3.

In contrast, the reports limit their discussion of administrative proceedings to explaining that the limitations period expires no sooner than "a year after the final administrative decision." H.R. Rep. No. 1534, *supra*, at 4; see S. Rep. No. 1328, *supra*, at 3. Of course, that only underscores the statutory text's distinction between "actions" and "administrative proceedings." Moreover, the reports explain that it was necessary to extend the limitations period until after the conclusion

of administrative proceedings "because of the great number and variety of such proceedings." H.R. Rep. No. 1534, *supra*, at 4; see S. Rep. No. 1328, *supra*, at 3. That further confirms that Congress did not intend to enact a one-size-fits-all limitations period for the commencement of the variety of administrative proceedings, but instead intended that Section 2415(a)'s limitations period would not expire until after administrative proceedings produced a final decision, a term with both familiar meaning in administrative law and uniform content across the range of administrative proceedings.

The proposed legislation was forwarded to Congress by the Department of Justice, which represents the United States in courts (see 28 U.S.C. 516), not by any other agency with authority for a particular administrative program. See H.R. Rep. No. 1534, *supra*, at 9-14. The Attorney General's letter to Congress explains that Section 2415, in conjunction with companion legislation concerning actions against the government, would "improve the disposition of monetary claims by and against the Government—claims which now comprise the bulk of *civil litigation* involving the Government." *Id.* at 9 (emphasis added). The Attorney General's recommendation also discusses "suits" as the subject of the legislation, *id.* at 11, and explains that the limitations period would "ease court congestion," resulting in "removal from the courts of litigation." *Id.* at 9, 12. In contrast to those repeated references to suits in court, the Attorney General's recommendation makes no mention of administrative proceedings.

The legislative hearings contain numerous similar references to "court claims," "suits," "civil litigation," and "reduc[ing] unnecessary litigation and court congestion." *Improvement of Procedures in Claims Settlement*

and Government Litigation: Hearing Before Subcomm. No. 2 of the House Comm. on the Judiciary, 89th Cong., 2d Sess. 5, 6, 7, 9, 10 (1966) (statement of John W. Douglas, Asst. Att'y Gen., Civil Div., Dep't of Justice, on H.R. 13652). In sum, the contemporaneous legislative history leaves little doubt that Congress addressed litigation in the courts, not the variety of agency proceedings that could involve the collection of money.

2. Petitioners mostly avoid Section 2415(a)'s legislative history. While they assert (Pet. Br. 40) that "it was the potential abuse of *administrative* processes that led to Section 2415's enactment," they cite nothing in the legislative history of Section 2415 that supports that statement. Instead, petitioners rely on a brief observation made by one Member of the House of Representatives during a hearing before the House Government Operations Committee that addressed a variety of issues concerning Defense Department and General Accounting Office auditing procedures. See *id.* at 41-42. There is no reason to believe that the brief remark relied on by petitioners influenced the later proposal of Section 2415 by the Justice Department, consideration of the bill by a different committee in the House (the Judiciary Committee), and the statute's enactment by the full Congress.

To the contrary, the House Report on the bill that enacted Section 2415 correctly notes that the report of the Government Operations Committee had expressed a need for "a statute of limitations which would apply to *suits* by the government." H.R. Rep. No. 1534, *supra*, at 8 (emphasis added); see H.R. Rep. No. 1344, 89th Cong., 2d Sess. 16 (1966) (recommending the development of "recommendations with respect to application of the statute of limitations to *suits* by the government")

(emphasis added). Petitioners point to nothing in the history of the legislation that enacted Section 2415 (including subsection (a) at issue here) suggesting that Congress intended to reach beyond suits in court to regulate the issuance of administrative orders.

3. Equally misplaced is petitioners' reliance (Pet. Br. 26-30, 44-45) on subsequent legislation. Of course, "[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 840 (1988) (quoting *United States* v. *Price*, 361 U.S. 304, 313 (1960)). In any event, neither the subsequent legislation nor its legislative history suggests that any Congress ever thought that Section 2415 applied to administrative proceedings or attempted to extend it to those proceedings.

a. Petitioners rely primarily (Pet. Br. 26-30) on 28 U.S.C. 2415(i), which provides that "[t]he provisions of [28 U.S.C. 2415(a)] shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." That provision, which was enacted 16 years after Section 2415(a), resolved a specific dispute about administrative offsets by clarifying that the statute does not apply to them; it did not expand the statute's coverage to other administrative proceedings.

As the court of appeals explained (Pet. App. 18a-19a), and petitioners concede (Pet. Br. 28-30 & n.17), the Comptroller General disagreed with the Department of Justice's Office of Legal Counsel (OLC) about whether Section 2415(a) applied to administrative offsets, and recommended the enactment of Section 2415(i) "as a means of resolving the differences between us." *Debt*

Collection Act of 1981: Hearings on S. 1249 Before the Senate Comm. on Governmental Affairs, 97th Cong., 1st Sess. 83 (1981) (statement of Milton J. Socolar, Acting Comptroller Gen.). The Senate Report explains that Congress intended the amendment to "clarify[]" that the limitations period does not apply to administrative offsets. S. Rep. No. 378, 97th Cong., 2d Sess. 2 (1982); see *id.* at 16 (describing the amendment's "[c]larification" on that point). Petitioners can point to nothing suggesting that Congress intended to do anything other than address the specific dispute before it. If anything, Congress's "clarif[ication]" that Section 2415(a) does not govern administrative offsets suggests that Congress thought the statute did not apply to administrative proceedings generally. *Id.* at 2.

Although petitioners argue (Pet. Br. 26-27) that Section 2415(i) should not be read to be surplusage, administrative offsets are different from other administrative proceedings. In opining that offsets were subject to Section 2415(a)'s limitations period, OLC explained that "[w]here the debt has not been reduced to judgment, an administrative offset is merely a pre-judgment attachment device. Thus, if no possibility of obtaining a judgment on the alleged debt exists, the administrative offset cannot be used." Memorandum from John M. Harmon, Asst. Att'y Gen., OLC, Dep't of Justice, to Alan K. Campbell, Chairman, U.S. Civil Serv. Comm'n, *Effect of Statute of Limitations on Admin. Collection of U.S. Claims* 3-4 (Sept. 29, 1978); see *id.* at 9 n.3 ("this administrative procedure is merely a pre-judgment attachment device"). An administrative adjudication presents a different question because it functions as a judgment of liability, not merely as a pre-judgment attachment.

Moreover, giving effect to Section 2415(a)'s plain terms as applying its limitations periods only to court actions does not render Section 2415(i) superfluous. The question OLC addressed arose in a situation where the debt the government sought to collect was to be offset against the government's ongoing payment of benefits under another provision—in that case, the Civil Service Retirement Program—even in the absence of a discrete claim against the United States. If the debt the government sought to collect could otherwise be enforced only through an affirmative action in court, and an action in court on that debt would be barred by Section 2415(a), Section 2415(i) clarifies that such an offset is not time-barred. The question whether an otherwise time-barred claim can be used defensively as an offset in that manner arises whether or not Section 2415(a) limits only court actions or both court actions and administrative proceedings brought by the government. The addition of Section 2415(i) therefore does not suggest that Section 2415(a) applies to the institution of administrative proceedings.

In any event, as the court of appeals explained, the "preference for avoiding surplusage constructions is not absolute." Pet. App. 18a (quoting *Lamie* v. *U.S. Trustee*, 540 U.S. 526, 536 (2004)); accord *Chickasaw Nation* v. *United States*, 534 U.S. 84, 94 (2001). Because Congress acted to clarify a specific, disputed question of law, the 1982 amendment should not be read more broadly. *O'Gilvie* v. *United States*, 519 U.S. 79, 89-90 (1996); see *United States* v. *Vonn*, 535 U.S. 55, 71 (2002) ("Having pinpointed th[e] problem, [Congress] gave a pinpoint answer."). Moreover, plain statutory text trumps the surplusage canon. See, *e.g.*, *Lamie*, 540 U.S. at 536. That point applies with special force here because the

text must be construed strictly in favor of the government, and the statutory context and legislative history confirm the text's ordinary meaning. As the court of appeals emphasized, "[e]xpanding the apparent scope of a statute of limitations beyond its plain language by inference from an express exception is hardly strict construction." Pet. App. 19a.

Finally, if Section 2415 did not reach administrative proceedings before the addition of subsection (i), it cannot seriously be maintained that Congress would have taken the significant step of extending the limitations period to all manner of administrative proceedings through the elliptical route of exempting administrative offsets. Congress would have had many more direct routes to accomplish that significant step, which only reinforces subsection (i)'s status as a minor clarification, not a major extension, of Section 2415's reach.[9]

b. Although petitioners also rely (Pet. Br. 44-45) on amendments to Section 2415 that extended the limitations periods for some Indian claims, those amendments and their legislative history only confirm that the limitations period does not apply to administrative proceedings. In 1972, Congress amended Section 2415(a) to extend the time for filing "an action for money damages" on behalf of Indian Tribes, bands, and groups. Act of Oct. 13, 1972, Pub. L. No. 92-485, 86 Stat. 803. Like the committee reports concerning the original Section

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[9] Petitioners suggest there is something anomalous about subjecting affirmative administrative actions to no time limit, while offsets are limited to a ten-year period. But affirmative administrative actions may be limited by context-specific limitations periods. See, *e.g.*, 30 U.S.C. 1724(b)(1). Likewise, because administrative offsets might be available for claims that could otherwise only be enforced in courts, an outer limit on offsets complements the limitations on court actions.

2415(a), the committee reports on the amendment are full of references to "suits" and "litigation," but not to administrative proceedings. *E.g.*, H.R. Rep. No. 1267, 92d Cong., 2d Sess. 3 (1972); S. Rep. No. 1253, 92d Cong., 2d Sess. 2 (1972). Indeed, they state that "the cost to the United States government" of pursuing the affected claims "would be limited to the costs of prosecuting the claims *in the courts*." H.R. Rep. No. 1267, *supra*, at 4 (emphasis added); S. Rep. No. 1253, *supra*, at 3 (emphasis added). In the hearing transcript cited by petitioners (Pet. Br. 44-45), the very witness whose testimony is relied upon by petitioners likewise explained that "[t]hese are claims that would be filed in the Federal district court." *Time Extension for Commencing Actions on Behalf of Indians: Hearing Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess. 31 (1972) (Arthur Lazarus, Jr.). While petitioners are correct (Pet. Br. 45) that extensions of the limitations period would have been unnecessary if Congress had been concerned only with administrative collection of oil and gas royalties under the MLA, Congress enacted those extensions to protect the broader range of Indian claims brought in the courts.[10]

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[10] Congress later required the Department of the Interior to publish a list of some Indian claims, and it extended the limitations period for each of those claims until after the date the claim is listed, the date the Secretary submits a legislative proposal to resolve the claim, or the date the Secretary rejects the claim "for litigation." Indian Claims Limitation Act of 1982, Pub. L. No. 97-394, §§ 3-6, 96 Stat. 1976-1978. That reference to "litigation" in this context further suggests that Congress was concerned with suits in courts, not administrative orders. The Secretary explained in publishing the required list that "[t]he vast majority of the listed claims involve trespasses to Indian land," 48 Fed. Reg. 51,204 (1983)—claims that would necessarily be heard in court.

D. Petitioners' Reliance On One Of The General Purposes Of Section 2415 Is Misplaced

Petitioners argue at length (Pet. Br. 31-40) that Section 2415(a) should be read broadly to promote general policies of fairness and repose. As the court of appeals explained, "such appeals to purpose cannot override a statute's clear language," Pet. App. 20a, especially where, as here, the statute must be strictly construed in favor of the government. *Badaracco*, 464 U.S. at 398. And because "no legislation pursues its purposes at all costs," "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987) (per curiam); see *ibid.* ("Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice."). In any event, the statutory policies do not support petitioners' attempt to extend Section 2415 to administrative proceedings, especially the MMS orders at issue here.

1. Petitioners err in arguing (Pet. Br. 33-34) that application of the limitations period to administrative proceedings is necessary to fulfill a congressional purpose "to place the government on (mostly) equal footing with private parties." The legislative history expresses an intent only "to provide a more balanced * * * treatment of *litigants in civil actions* involving the government." H.R. Rep. No. 1534, *supra*, at 3 (emphasis added). While "(mostly) equal footing" might be a meaningful concept in court cases, it has little application to administrative proceedings that only the agency can

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See generally *County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 241-244 (1985) (discussing background of 1982 amendments).

initiate, and in which the agency is charged with interpreting the governing statutes and regulations and is often fulfilling a trust responsibility to affected Indians. In that context, the agency acts as a regulator, not as a private party filing a commercial contract suit in court.

2. That conclusion is reinforced by the special circumstances of the government's mineral leasing program and by Congress's response.

a. Congress enacted FOGRMA in 1982 because oil and gas lessees were underpaying royalties by staggering amounts—up to half a billion dollars annually. H.R. Rep. No. 859, 97th Cong., 2d Sess. 16 (1982); see *id.* at 46 (discussing the "many instances of gross underpayment and nonpayment of royalties"). Congress responded by directing MMS to "audit and reconcile, to the extent practicable, *all current and past* lease accounts for leases of oil or gas and [to] take appropriate actions to make additional collections or refunds as warranted." 30 U.S.C. 1711(c)(1) (emphasis added). The House Report stressed that "the Committee expects the Department to continue to place high priority on reconciling *old* accounts." H.R. Rep. No. 859, *supra*, at 33 (emphasis added). Congress's emphatic direction to the Secretary to conduct such an audit of past lease accounts because of a history of massive underpayment hardly manifests an intent to limit liability for past misconduct.

Because lessees calculate their own royalty obligations, underpayments are especially difficult to identify in this context. MMS cannot realistically audit every royalty account. Recognizing that constraint, Congress instead required audits "to the extent practicable," and directed the Secretary to give priority to auditing some leases while selectively auditing others. 30 U.S.C. 1711.

Such audits can detect systematic underpayment dating back more than six years. The absence of a limitations period for administrative orders in this setting is entirely understandable—especially because many of the affected leases are on lands owned by Indians or Indian Tribes to whom the United States owes trust responsibilities. See, *e.g.*, 30 U.S.C. 1701(a)(4) and (b)(4).[11]

b. Petitioners miss the mark in arguing (Pet. Br. 36-37) that the applicability of a limitations period should not turn on MMS's choice to proceed administratively instead of in court. FOGRMA contemplates effective administrative enforcement. It requires the Secretary to establish a comprehensive auditing and *collection* system, 30 U.S.C. 1711(a), and it empowers the Secretary to enforce his orders administratively by imposing penalties of up to $10,000 for each day a lessee fails to comply with an order, 30 U.S.C. 1719(c)(1). Although the Attorney General may bring a civil action for equitable relief to require compliance with any federal mineral leasing law, 30 U.S.C. 1722(a), the Department of the Interior is not aware of any instance in which recourse to the courts was necessary to require compliance with

[11] There is no reason to attribute the absence of such a limitations period to oversight. The MLA and FOGRMA contain two limitations periods: one for the commencement of an "action contesting a decision of the Secretary," 30 U.S.C. 226-2, and another for the recovery of penalties, 30 U.S.C. 1755. Congress thereby demonstrated an awareness of limitations issues, and chose to enact limitations periods for matters *other than* the issuance of orders directing a lessee to pay past-due royalties or otherwise to comply with statutory and regulatory requirements.

an order to pay. Instead, MMS administratively imposes civil penalties to enforce its orders.[12]

c. As the mineral-leasing context illustrates, there is little reason to assume that Congress would want the same general limitations period that governs suits in court to apply to administrative proceedings. There are substantial procedural and other differences between court suits and administrative proceedings, and administrative proceedings themselves differ from context to context. One salient difference is that, in our liberal notice pleading system, a court complaint is expected to

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[12] If an especially determined lessee were unwilling to comply with an order to pay and remained undeterred by administrative penalties, the Attorney General would have at least one year from the final administrative decision to file suit to enforce the royalty order. Assuming, *arguendo*, that an action to enforce an order to pay would seek "money damages" "founded upon * * * [a] contract," and thus be governed by Section 2415(a), the limitations period would run no earlier than "one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law." 28 U.S.C. 2415(a). Petitioners err in asserting (Pet. Br. 43 n.23) that MMS's administrative proceedings are not required by law. FOGRMA requires MMS not only to conduct audits, but also to establish a comprehensive system for collecting royalties. 30 U.S.C. 1711(a). When an audit reveals an underpayment, MMS discharges that responsibility by sending an issue letter and, if appropriate, issuing an order to pay. See p. 22, *supra*. The ensuing administrative appeals are required by law as a precondition to seeking judicial review. See 30 C.F.R. 290.110 (outlining the requirements for exhausting administrative remedies). A contrary conclusion would be perverse, because Congress obviously intended the one-year period to permit agencies to conclude administrative proceedings before filing in court. See H.R. Rep. No. 1534, *supra*, at 4 (explaining that the one-year period is necessary "because of the great number and variety of [administrative] proceedings"); cf. *Mesa Operating Ltd. P'ship* v. *Department of the Interior*, 17 F.3d 1288, 1291-1292 (10th Cir. 1994) (explaining how Section 2415(a) would apply to a judicial enforcement action by MMS).

be short and concise, and allegations can be made on information and belief. See Fed. R. Civ. P. 8, 11. In contrast, for example, MMS must undertake far more effort before issuing an order. MMS or a State with delegated authority must conduct an audit to determine whether a lessee has made correct royalty payments. Then MMS typically provides informal administrative process by sending an issue letter to the lessee and awaiting a response before deciding whether to issue an order to pay. See p. 22, *supra*.

Congress thus had good reason not to subject MMS's administrative orders to the same general limitations period that governs complaints filed in court. Doing so would penalize MMS for affording informal process before issuing an order, because the limitations period would ordinarily continue to run while MMS awaited the lessee's response and decided whether to issue an order. Congress evidently recognized that difficulty, because when it enacted a prospective limitations period in 1996 for MMS's orders to pay royalties for oil and gas production on federal lands, it selected a period of seven—not six—years. 30 U.S.C. 1724(b)(1).

3. Petitioners greatly overstate the potential harms they face from having to make good on royalties they systematically withheld for more than six years. Petitioners argue (Pet. Br. 37-38) that records from earlier time periods may have been destroyed, as permitted by FOGRMA. There are two problems with that argument. First, although records ordinarily need only be kept for six years, "such records must be maintained for a longer period" if "the Secretary notifies the record holder that he has initiated an audit or investigation involving such records." 30 U.S.C. 1713(b). Petitioners therefore err in arguing (Pet. Br. 32-33, 38) that FOGRMA's record-

retention provisions suggest that a six-year statute of limitations applies.[13] Second, the lawful destruction of records would make the issuance of an order to pay unlikely. Without records to audit and review, it would often be impractical for MMS to conduct an audit and determine the amount of any underpayment.

Although petitioners also emphasize (Pet. Br. 38-39) that lessees must pay interest on past-due royalties, interest payments merely compensate for the time value of money, *i.e.*, the fact that the lessee benefitted from retaining and using money that it should have paid to the government or an Indian lessor. As this Court has explained, "prejudgment interest is not awarded as a penalty; it is merely an element of just compensation." *City of Milwaukee* v. *Cement Div., Nat'l Gypsum Co.*, 515 U.S. 189, 197 (1995); see Pet. Br. 50.

Petitioners profess concern (Pet. Br. 36) that MMS could seek royalties dating back "in perpetuity," but they cite no instance in which MMS has done anything like that. Here, only about 20 months are in dispute, because MMS's May 1997 order extends back to January 1989—approximately 29 months longer than petitioners consider appropriate, with nine of those months covered by a tolling agreement the parties entered into during the administrative proceedings. See Amoco Admin. R. 842, 844, 846.

4. The bottom line is that Congress may choose to address a problem in stages, and it is not the province of the courts to rewrite a statute in hopes of better achiev-

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[13] In some instances, the Secretary might be able to recover royalties for the older periods even if Section 2415(a) applied, because the limitations period does not run when "facts material to the right of action are not known and reasonably could not be known" by a responsible government official. 28 U.S.C. 2416(c).

ing one of Congress's purposes. *Director, Office of Workers' Compensation Programs, Dep't of Labor* v. *Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 135-136 (1995). The question whether Section 2415(a) applies to administrative proceedings has arisen primarily in the context of mineral leases under the MLA. When Congress became aware of that issue, it enacted a limitations period in 1996 for oil and gas leases on federal lands, but it applied that new limitations period only prospectively, it chose a *longer* period than would apply under Section 2415(a), and it did not apply that new limitations period to federal leases of minerals other than oil and gas or to any Indian leases. 30 U.S.C. 1724(b). Reading Section 2415(a) to apply to administrative proceedings would produce the bizarre result that a shorter limitations period would apply to Indian leases than to federal leases, notwithstanding Congress's express purpose to "fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources." 30 U.S.C. 1701(b)(4); see 30 U.S.C. 1701(a)(4) ("the Secretary should aggressively carry out his trust responsibility"). For those reasons, and given the clear text, context, and legislative history of Section 2415(a), further adjustment of the limitations periods is a fundamentally legislative task.[14]

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[14] Because the court of appeals held that MMS's order was not a "complaint" in an "action," it did not reach respondents' alternative arguments that the order did not seek money damages and was not founded upon a contract within the meaning of Section 2415(a). Pet. App. 20a; see Gov't Pet.-stage Br. 17-19. Petitioners are correct (Pet. Br. 45) that there is no reason for this Court to depart from its normal practice of considering only the issues decided below. If this Court were to disagree with the court of appeals' decision, respondents could renew their alternative arguments on remand.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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